MISSOURI COURT OF APPEALS WESTERN DISTRICT

IN THE RE THE MATTER OF: MATTHEW AARON SCOBEE, BY HIS NEXT FRIEND, KRISTI ROBERTS, AND KRISTI ROBERTS, INDIVIDUALLY APPELLANT

vs.

GAIL LYNN SCOBEE, RESPONDENT

DOCKET NUMBER WD73857

DATE: MARCH 6, 2012

Appeal from:

The Circuit Court of Clinton County, Missouri The Honorable Richard B. Elliott, Judge

Appellate Judges:

Division Four: Lisa White Hardwick, C.J., Joseph M. Ellis, J. and Gary Ravens, Sp. J.

Attorneys:

Michele C. Puckett-Burkhead, for Appellant

Kristen C. Johnson, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS WESTERN DISTRICT

IN THE RE MATTER OF: MATTHEW AARON SCOBEE, BY HIS NEXT FRIEND, KRISTI ROBERTS, INDIVIDUALLY, APPELLANT

GAIL LYNN SCOBEE, RESPONDENT

WD73857

Clinton County, Missouri

Before Division Four Judges: Lisa White Hardwick, C.J., Joseph M. Ellis, J. and Gary Ravens, Sp.J.

Kristi Roberts ("Mother") appeals from a paternity judgment entered by the Circuit Court of Clinton County awarding her \$750 per month in child support from Gail Lynn Scobee ("Father"). Mother asserts that the trial court erred in (1) rebutting the PCSA as unjust and inappropriate and awarding her \$750 per month in child support, (2) denying her request that the child support award be made retroactive, (3) denying her request for reasonable attorney's fees, and (4) awarding the dependency deduction for state and federal income tax purposes to Father.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

Division Four holds:

- (1) The trial court erred in its conclusion that Mother's Form 14 PCSA calculation was unjust an inappropriate on the basis of its finding that Mother was underemployed. Given the interrelation between a finding of underemployment and the imputation of income on a parent's Form 14, the trial court's acceptance of a Form 14 that calculated Mother's income at \$0 is inconsistent with its subsequent rebuttal of the PCSA as unjust and inappropriate because Mother is underemployed. Thus, the trial court erred in its treatment of the underemployment issue.
- (2) The trial court did not abuse its discretion in denying Mother's request that the child support be awarded retroactively because evidence was introduced that up until the time of the trial Father voluntarily made monthly payments to Mother of approximately \$1,000 to \$1,300 that served as child support for Son and payment of the utility bills.
- (3) The trial court did not abuse its discretion in denying Mother's request for attorney's fees because the trial court has the discretion to consider other factors

in addition to the disparity in income between the parties when determining whether to award attorney's fees.

(4) The noncustodial parent can be awarded the right to claim a child as a dependent for income tax purposes only after the trial court rebuts the PCSA as unjust and inappropriate. Therefore, because we hold that the trial court erred in rebutting the PCSA as unjust and inappropriate on the basis that Mother was underemployed, and that holding affects issues regarding the award of the dependency deduction, we must also reverse the trial court's award of the dependency tax exemption to Father.

Date: March 6, 2012

Opinion by Joseph M. Ellis, Judge

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